

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1-3, 5-10 and 12-20 are now present in this application. Claims 1, 5, 8, 12, 19 and 20 are independent. By this Amendment, claims 1, 2, 3, 5, 8, 9 and 12 are amended, and claims 19 and 20 are added. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

Initially, Applicants note that the Office Action states, with respect to claim 5, for purposes of examination, that the notch recesses are formed in the top and bottom flanges only and that the side flanges are notchless. Applicants respectfully disagree with this interpretation of claim 5. Claim 5 positively recites that the notch recesses are formed at both ends of the side flanges. However, the Examiner raises a good point because, in claim 1, the notch recesses are recited in the top and bottom flanges, whereas, in claim 5, the notch recesses are formed in the side flanges. Applicants' originally-filed claim 1 did not recite where the notch recesses were located in the front panel, and Applicants' originally-filed claim 5 recited that the notch recesses were in the side flanges of the front panel, which is a feature clearly disclosed in originally filed paragraph [0055] in the main body of the specification. Accordingly, claim 5 has been amended by being rewritten in independent form to positively recite that the recesses are located in the side flanges of the front cover, similar to originally filed claim 5. A similar amendment is made to claim 12.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 2 and 9 stand rejected under 35 U.S.C. § 112, second paragraph, because the language “outline of the front panel” is not understood from the claim. This rejection is traversed because these claims are amended to change “an outline” to --a peripheral-- to clarify the meaning of the claim.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Rejection Under 35 U.S.C. § 102 and § 103

Claims 1-3, 5, 7-10, 12 and 14-18 stand rejected under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over JP 8-299684 to Tetsuo et al. (“Tetsuo”). This rejection is respectfully traversed.

During patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicants are entitled to the patent. Applicants respectfully submit that the PTO has failed to meet this burden.

Tetsuo contains no disclosure whatsoever of providing a structure that reduces stress concentration. Instead, Tetsuo is directed to providing a hook flange 8 on the front panel 7 to slide into a recess on the top cover to the washing machine so that support members 11 line up with hook holes 17 formed on right- and left-hand sides’ peripheral edges 2a of the cabinet.

The hook flange 8 extends vertically from a tapered horizontal flange (unnumbered) that tapers to match the width of the hook flange, the tapered horizontal flange having a trapezoidal

shape. This unnumbered trapezoidally-shaped horizontal flange has a width where it meets the front panel 7 that is substantially less than the width of the front panel 7. This unnumbered trapezoidally-shaped horizontal flange has no recesses located in it whatsoever.

Claims 1 and 8 have been amended to positively recite that the recesses are within and adjacent to both ends of the top and bottom flanges. Tetsuo neither discloses nor suggests this combination of features.

As noted above, there are no recesses in Tetsuo's trapezoidally-shaped horizontal flanges. In other words, Tetsuo has no concept whatsoever of the claimed invention, including providing recesses in its horizontal flanges.

The Office Action also indicates that Tetsuo has a bottom frame 15. Applicants respectfully disagree with this interpretation of the stop protruding pieces 15 as frames. Moreover, even if the stop protruding pieces are considered, for sake of argument, to be a bottom frame, Tetsuo still does not disclose or suggest the claimed invention.

Moreover, claims 3, 5, 7, 8, 10, 12 and 14-18 all recite these features, so these claims patentably define over Tetsuo for at least these reasons.

With respect to the portion of the rejection directed to "an open front portion" and "an open front panel horizontal washing machine to achieve the expected result for door placement", Applicants do not understand where these features are positively recited in the claimed invention.

While Applicants believe that the claims read on top loading and side, e.g., front, loading washing machines, Applicants do not find the exact words "an open front portion" or "an open front panel horizontal washing machine" or "door placement."

However, because the Examiner has brought up this issue, Applicants note that the claimed invention covers top loading and side loading, including front side loading, washing machines.

In order to be completely responsive to this rejection, Applicants note that the assertion that it has been held that an obvious choice in design is not patentable, citing "*In re Kuhle*" fails to make out a *prima facie* case of obviousness of the claimed invention for several reasons.

Firstly, the Office Action fails to establish that Tetsuo discloses a front loading washing machine or any washing machine with a front panel with recesses as recited.

Secondly, the claimed invention recites recesses having a particular function, i.e., for preventing stress concentration. This is not a design feature, but a positively recited utility feature of the claimed invention.

Thirdly, this rejection relies on a *per se* rule that design choices are obvious. As stated by the Federal Circuit in *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), "reliance on *per se* rules of obviousness is legally incorrect and must cease." Moreover, the "*Kuhle*" decision concerned the particular placement of a contact in a conductivity measurement device, which the Office Action fails to demonstrate has anything to do with providing a recess at all, let alone for preventing stress concentration, and for locating it at the claimed location. Further in this regard, as pointed out in M.P.E.P. § 2144.04, which discusses the "*Kuhle*" case, the prior art must provide a motivation or reason for the worker in the art, without the benefit of Appellant's specification, to make the necessary changes in the reference device. In this instance, as noted above, the Office Action fails to demonstrate anything at all to do with providing a recess, let alone for preventing stress concentration, and for locating it at the claimed location.

With respect to claims 5 and 12, these claims recite notch recesses in the side flanges, a feature not addressed in this rejection and neither disclosed nor suggested by Tetsuo.

Accordingly, the Office Action fails to make out a *prima facie* case of anticipation of claims 1-3, 5, 7-10, 12 and 14-18 by Tetsuo.

Reconsideration and withdrawal of this rejection of claims 1-3, 5, 7-10, 12 and 14-18 are respectfully requested.

Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tetsuo. This rejection is respectfully traversed.

Tetsuo contains no disclosure whatsoever of providing a structure that reduces stress concentration. Instead, Tetsuo is directed to providing a hook flange 8 on the front panel 7 to slide into a recess on the top cover to the washing machine so that support members 11 line up with hook holes 17 formed on right- and left-hand sides' peripheral edges 2a of the cabinet.

The hook flange 8 extends vertically from a tapered horizontal flange (unnumbered) that tapers to match the width of the hook flange, the tapered horizontal flange having a trapezoidal shape. This unnumbered trapezoidally-shaped horizontal flange has a width where it meets the front panel 7 that is substantially less than the width of the front panel 7. This unnumbered trapezoidally-shaped horizontal flange has no recesses located in it whatsoever.

Claims 1 and 8 have been amended to positively recite that the recesses are within and adjacent to both ends of the top and bottom flanges. Tetsuo neither discloses nor suggests this combination of features.

As noted above, there are no recesses in Tetsuo's trapezoidally-shaped horizontal flanges. In other words, Tetsuo has no concept whatsoever of the claimed invention, including providing recesses in its horizontal flanges.

The Office Action also indicates that Tetsuo has a bottom frame 15. Applicants respectfully disagree with this interpretation of the stop protruding pieces 15 as frames. Moreover, even if the stop protruding pieces are considered, for sake of argument, to be a bottom frame, Tetsuo still does not disclose or suggest the claimed invention.

Moreover, claims 6 and 9 all recite these features, so these claims patentably define over Tetsuo for at least for these reasons.

With respect to the portion of the rejection directed to "the U-shape of the notch recesses," Applicants note the assertion that it has been held that changes in shape are obvious, citing "*In re Dailey*." However, reliance on this assertion fails to make out a *prima facie* case of obviousness of the claimed invention for several reasons.

Firstly, the Office Action fails to establish that Tetsuo discloses a washing machine with a front panel with recesses as recited.

Secondly, the claimed invention recites recesses having a particular function, i.e., for preventing stress concentration. This is not a design feature, but a positively recited utility feature of the claimed invention.

Thirdly, this rejection relies on a *per se* rule that changes in shape are obvious. As stated by the Federal Circuit in *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), "reliance on *per se* rules of obviousness is legally incorrect and must cease. " Moreover, the statement that "*In re Dailey*, 149 USPQ 47" stands for the proposition that "a change of shape is

a matter of choice, which a person of ordinary skill in the art would have found obvious absent persuasive evidence" is not correct. Actually, all that the Court of Customs and Patent Appeals stated, in this regard, in that case was:

Claim 27, while defining no particular nipple opening structure, recites the configuration of the top and bottom sections of the container as that of "a portion of a sphere less than a hemisphere." In claim 28, the central angle of those spherical portions is about 80°.

* * * * *

As noted above, Matzen discloses that the flexible portion of his container is drawn into the rigid top portion, filling the space thereof. Appellants have presented no argument which convinces us that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the collapsed container of Matzen. See Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459.

Turning to the facts at hand, the Office Action provides no objective factual evidence that one of ordinary skill in the art would be properly motivated to turn to the "*In re Dailey*" case to come up with the claimed U-shaped recesses, especially when Tetsuo does not disclose the claimed recesses at all, let alone for preventing stress concentration, as claimed, and does not contain any suggestion that such a configuration would provide the advantages disclosed by Applicant's specification.

More importantly, the mere citation of any case as a basis for rejecting process claims that differ from the prior art by their use of different starting materials is improper, as it sidesteps the

fact-intensive inquiry mandated by Section 103. In other words, there are no "*In re Dailey*" obviousness rejections," but rather only Section 103 obviousness rejections.

As pointed out in *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995), this method of analysis is founded on legal error because it substitutes supposed *per se* rules for the particularized inquiry required by Section 103. It necessarily produces erroneous results.

Existing case law is grounded on the same analytic principle, namely, that Section 103 requires a fact-intensive comparison of the claimed process with the prior art rather than the mechanical application of one or another *per se* rule. The Court went on to state that the controlling law is in Section 103 of the statute which must be applied to the facts of each, and that the function of the Office and the Courts is to apply, in each case, Section 103 as written to the facts of disputed issues, not to generalize or make rules for other cases which are unforeseeable. The case law presents applications of a unitary legal regime to different claims and fields of art to yield particularized results. Moreover, the Court has consistently cautioned the Bar not to generalize or make rules for other cases.

The Court went on to state that the use of *per se* rules, while undoubtedly less laborious than a searching comparison of the claimed invention -- including all its limitations -- with the teachings of the prior art, flouts Section 103 and the fundamental case law applying it. *Per se* rules that eliminate the need for fact-specific analysis of claims and prior art may be administratively convenient for PTO Examiners and the Board. Indeed, they have been sanctioned by the Board as well. But reliance on *per se* rules of obviousness is legally incorrect and must cease. Any such administrative convenience is simply inconsistent with Section 103, which, according to *Graham* and its progeny, entitles an Applicant to issuance of an otherwise

proper patent unless the PTO establishes that the invention, *as claimed*, in the application is obvious over cited prior art, based on the specific comparison of that prior art with claim limitations.

The Court held that its precedents do not establish any *per se* rules of obviousness, just as those precedents themselves expressly declined to create such “*per se*” rules.

Thus, this use of case law on which to base an obviousness-type rejection is completely improper. The “*Dailey*” decision concerned the particular placement of a contact in a conductivity measurement device, which the Office Action fails to demonstrate has anything to do with providing a recess at all, let alone for preventing stress concentration, and for locating it at the claimed location.

Accordingly, the Office Action fails to make out a *prima facie* case of anticipation of claims 6 and 13 by Tetsuo.

Reconsideration and withdrawal of this rejection of claims 6 and 13 are respectfully requested.

New Claims 19 and 20

These claims positively recite a combination of features neither disclosed nor suggested by the applied art and, for that reason, are patentably distinct from the applied art. Support for the amended claim language is clearly shown in Fig. 4, for example. In this regard, Applicants point out that it has been held that drawings alone constitute proper disclosure even if what is shown in the drawings is accidental. *See Ex parte Prybil*, 156 USPQ 64 (Bd. Pat. App. 1967). Moreover,

such disclosure is available for all that it teaches one of ordinary skill in the art. *See In re Meng and Driessen*, 181 USPQ 94 (CCPA 1974) and *In re Aslanian*, 200 USPQ 500 (CCPA 1979).

In this case, with respect to claims 19 and 20, Fig. 4 clearly shows flanges formed around the entire periphery of the front panel and the notch recess depth features that are recited in these claims.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

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Reply to August 16, 2007 Office Action

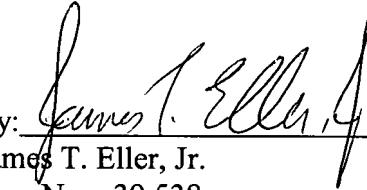
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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